FILED
MAR 20 198
CLERK

No. 80-1147

In the Supreme Court of the United States

OCTOBER TERM, 1980

LOCAL 1576, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

LEROY D. CLARK
General Counsel

PHILIP B. SKLOVER
Acting Associate General Counsel

VINCENT BLACKWOOD
Assistant General Counsel

JOEL M. COHN
Attorney

Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506
(202) 634-6230

QUESTION PRESENTED

Whether the court of appeals correctly ordered the merger of four longshoremen locals which were chartered and segregated on the basis of race and national origin where that segregation resulted in the denial of equal working opportunities to black, white, and Mexican-American longshoremen.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	2
Argument	9
Conclusion	23

TABLE OF AUTHORITIES

Cases:

Bailey v. *Ryan Stevedoring Co.*, 528 F.2d 551, cert. denied, 429 U.S. 1052, on motions for relief from judgment, 613 F.2d 588, cert. denied, No. 80-569 (Mar. 2, 1981) 10

Chicago Federation of Musicians, Local No. 10 v. *American Federation of Musicians*, 57 L.R.R.M. 2227 22

EEOC v. *Local 14, International Union of Operating Engineers*, 553 F.2d 251 ..... 10, 11

Emporium Capwell Co. v. *Western Addition Community Organization*, 420 U.S. 50 21

English v. *Seaboard Coast Line R.R.*, 4 Empl. Prac. Dec. ¶ 7645 10

Evans v. *Sheraton Park Hotel*, 503 F.2d 177 10

Franks v. *Bowman Transportation Co.*, 424 U.S. 747 ..... 16-17, 18, 19

Hicks v. *Crown Zellerbach Corp.*, 310 F. Supp. 536 10

Long v. *Georgia Kraft Co.*, 455 F.2d 331 10

Milliken v. *Bradley*, 418 U.S. 717 14

Musicians' Protective Union Local 274 v. *American Federation of Musicians*, 329 F. Supp. 1226.. 22

NLRB v. *Local No. 106, Glass Bottle Blowers Association*, 520 F.2d 693 22

PREVIOUS PAGE WAS BLANK

Cases—Continued Page

Rock v. *Norfolk & Western Ry.*, 473 F.2d 1344, cert. denied, 412 U.S. 933 10
Sledge v. *J. P. Stevens & Co.*, 585 F.2d 625, cert. denied, 440 U.S. 981 18
Steele v. *Louisville & Nashville R.R.*, 323 U.S. 192.. 22
Teamsters v. *United States*, 431 U.S. 324 .....14, 15, 19
United States v. *Chesapeake & Ohio Ry.*, 3 Empl. Prac. Dec. ¶ 8331 10
United States v. *International Longshoremen's Association*, 460 F.2d 497, cert. denied, 409 U.S. 1007 10
United States v. *Jacksonville Terminal Co.*, 451 F.2d 418, cert. denied, 406 U.S. 906 10
United States v. *Local 189, United Papermakers & Paperworkers*, 301 F. Supp. 906, aff'd, 416 F.2d 980, cert. denied, 397 U.S. 919 10
Williams v. *New Orleans Steamship Association*, 466 F. Supp. 662 10

Statutes and rule:

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e *et seq.* .....*passim*
Section 703(c)(2), 42 U.S.C. 2000e-2(c)(2).. 5, 9, 14, 18
Section 707(d), 42 U.S.C. 2000e-6(d) 2
Fed. R. Civ. P. 54(b) 7

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1147

LOCAL 1576, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 623 F.2d 1054. The opinion of the district court (Pet. App. 13a-21a) is unreported. The prior opinion of the court of appeals (Pet. App. 23a-37a) is reported at 511 F.2d 273, and this Court's denial of the petition for a writ of certiorari in the

first appeal (Pet. App. 22a) is reported at 423 U.S. 994. The original opinion of the district court (Pet. App. 38a-49a) is reported at 334 F. Supp. 976.

JURISDICTION

The judgment of the court of appeals was entered on August 13, 1980. On October 30, 1980, Justice Powell extended the time within which to file a petition for a writ of certiorari to and including January 10, 1981. The petition was filed on January 9, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In January 1969, the Attorney General filed this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*,[1] against the International Longshoremen's Association (ILA), the South Atlantic and Gulf Coast District of the ILA, and 37 ILA-chartered locals that represent longshoremen and warehousemen along the Texas Gulf Coast. The Attorney General alleged that the defendants were engaged in a pattern or practice of discrimination on grounds of race and national origin by maintaining local unions, hiring halls, and work gangs that were classified and segregated on the basis of race and national origin, resulting in the denial of equal employment opportunities to black and Mexican-American longshoremen.

---

[1] In 1972, the Equal Employment Opportunity Commission was substituted as plaintiff, pursuant to Section 707(d) of Title VII, 42 U.S.C. 2000e-6(d).

After a lengthy trial, the district court, on November 12, 1971, issued a memorandum in which it made various findings of fact and concluded that the defendants had violated Title VII of the Civil Rights Act of 1964. The court found that "[o]f the thirty-seven local unions which are party Defendants, sixteen locals were for White longshoremen and have no Negro members, and nineteen were for Negro longshoremen and have no White members, and two locals are composed predominantly of Mexican-American longshoremen" (Pet. App. 40a). The court stated (*id.* at 41a):

> It has been stipulated that the I.L.A. chartered the locals on the basis of race, and there is no question that it has maintained these locals on the basis of race, has at all times been aware of their segregated nature and has done nothing to seek their merger, or to charter integrated locals since the passage of the Civil Rights Act.

In addition to those findings regarding the segregation of the ILA locals along the Texas Gulf Coast generally, the district court also made detailed findings of discrimination in Galveston resulting from jurisdictional limitations in the charter of petitioner Local 1576 (Pet. App. 47a). The court found similar discriminatory effects resulting from the fact that the jurisdiction of Local 329, a black local in Galveston, was limited by its charter from the ILA to four stevedoring companies, which had declining business. "The problems caused by this situation would not exist," the district court concluded, "if all longshoremen at the port of Galveston belonged to one local" (Pet. App. 48a).

From all of this, the district court's "basic finding" was that the defendant ILA and its district and locals "have chartered and still maintain locals on a segregated basis," that the work allocation rules among the segregated locals "deprive[d] longshoremen, be they Black or White, Anglo, Mexican-American or Negro, [of] equal working opportunities," and that "this will be a continuing violation in the future" (Pet. App. 48a). The district court nevertheless declined to order that the locals be merged, as the government had requested. The court did, however, enter an interim decree (Appendix to the Petition for a Writ of Certiorari (No. 75-356, 1975 Term) at 15a-26a) requiring the abolition of the separate hiring halls maintained by the locals and the establishment of a common hiring hall on a port-by-port basis. Under this decree, the hiring hall maintained by petitioner Local 1576 was to be merged with those of Local 307, the white local, and Locals 329 and 851, whose members were black. *Id.* at 16a. The decree also required the local unions that were ordered to operate a common hiring hall—which included petitioner and the other three locals in Galveston—to adopt a common seniority system (*ibid.*; see also Pet. App. 27a). With regard to Galveston, where the court had specifically found discriminatory effects resulting from the existence of segregated locals, the court also ordered that no limitations be placed on the stevedoring companies for which a longshoreman could work (*id.* at 24a). The effect would have been to lift the provision in petitioner's charter limiting its jurisdiction to bananas and green fruit work, as well as the jurisdictional restriction in the charter of one of the black locals, discussed above. The district court appointed an arbitrator to work out the details

of the interim decree, which were then to be incorporated in a final decree.

3. The EEOC [2] appealed from the district court's order declining to require a merger of the locals, and the court of appeals reversed. The majority observed that the lower court had "specifically found that 'the Government has discharged * * * [its] burden * * * [of showing] that the maintenance of segregated locals constitutes a pattern or practice depriving individuals of working opportunities, because of their race or national origin' " (Pet. App. 36a, quoting *id.* at 45a). In these circumstances, the majority concluded (*id.* at 37a), merger of the locals in each port was required.[3]

4. The ILA, the South Atlantic and Gulf Coast District of the ILA, and 31 locals in Texas chartered by the ILA—including petitioner Local 1576—petitioned for a writ of certiorari to review the judgment of the Fifth Circuit. See Petition for a Writ of Certiorari (No. 75-356, 1975 Term) at 1 n.1. The ILA, the District, and the locals acknowledged in the petition that in Brownsville and Galveston, "the Government did prove instances of arguably discriminatory practices that the District Court later said * * * were indicative of the inequities that can result from segregated locals" (Petition for a Writ of Certiorari (No. 75-356, 1975 Term) at 12); but they

---

[2] See note 1, *supra*.

[3] Judge Goldberg concluded (Pet. App. 29a-35a) that the maintenance of segregated local unions constituted, in effect, a per se violation of Section 703(c)(2) of the Act, 42 U.S.C. 2000e-2(c)(2), requiring merger of the locals. Judges Thornberry and Godbold did not reach this question, finding that, in this case, the existence of the segregated locals had a discriminatory effect on employment practices and that merger was therefore required (Pet. App. 36a-37a).

argued that the district court had adequately cured the discrimination in those cities by means other than ordering merger of the locals—*i.e.*, by ordering merger of the hiring halls and seniority lists (*ibid.*; see also *id.* at 13-15, 17, 26). Accordingly, they argued (*id.* at 21-29), the court of appeals erred in ordering merger of the locals in those cities and elsewhere. This Court denied certiorari (Pet. App. 22a).

5. Although the Fifth Circuit had held that merger of the segregated locals in each port was required, the district court, on remand, nonetheless concluded that petitioner Local 1576 should be excluded from the merger order (Pet. App. 13a-20a). In arriving at this conclusion, the court took note of the limited jurisdiction of Local 1576—the loading and unloading of bananas and green fruit—as compared to the general jurisdiction of the other locals. The court also observed that petitioner had not discriminated against members of any racial group (*id.* at 16a; see also *id.* at 20a), although it acknowledged at the same time the "tradition in Galveston locals that members of each race are expected to seek work only with the local whose membership is composed of that race" (*id.* at 16a).

The court was influenced as well by the fact that petitioner maintained a seniority system that differed in some respects from those of the other three locals. Although the court concluded that merger of all four locals would be "acceptable" if the merged local would grant a year's seniority to any longshoreman who qualified in his own local during that year, the three other locals refused to agree to that proposition, apparently because petitioner's relatively more liberal seniority rules might favor its members at the expense of members of the other three locals. *Id.* at 18a. Because of this "attitude" on the part of the other locals, the district court declined to order the merger

of petitioner with the other three locals.[4] But the district court went beyond merely excluding petitioner from the merger order; it ordered petitioner removed as a defendant in the case and granted partial summary judgment in its favor, pursuant to Fed. R. Civ. P. 54(b).

6. The court of appeals again reversed (Pet. App. 1a-12a), finding that the law of the case established on the prior appeal required inclusion of petitioner in the merger of the locals in Galveston. The court found "no question that [the] court's prior mandate [requiring merger] comprehended the Galveston locals. The district court opinion singled out [petitioner] and [Local] 329 as prime examples of locals whose members had been denied equal employment opportunity due to segregation. 334 F. Supp. at 980-981. Moreover, its interlocutory order requiring merger of hiring halls referred specifically to Galveston Locals 307, 329, 851, and 1576" (Pet. App. 8a). Nor did the court of appeals find a departure from the law of the case warranted because of new evidence that petitioner is no longer segregated or that

---

[4] The other three locals had initially opposed the inclusion of petitioner in the merger order, as had the ILA and the South Atlantic and Gulf Coast District of the ILA. The three locals subsequently reversed their position because of unidentified "changed circumstances" (Pet. App. 17a). There is some reason to believe that the "changed circumstances" may have been an increase in the volume of work within petitioner's jurisdiction. *Id.* at 16a, 18a-19a; see also Pet. 6, 8, 10. An increase in employment prospects might also explain petitioner's present resistance to merger, even though it had previously sought to have the jurisdictional limits in its charter lifted (Pet. App. 47a). This district court, too, appears to have been influenced by this consideration (*id.* at 18a-19a).

its segregated existence does not deprive any group of equal employment opportunity (Pet. App. 9a-10a):

> The evidence demonstrated the contrary. [Petitioner] Local 1576, still chartered as a union for Mexican-Americans, remains functionally segregated * * *. Based on evidence presented at the September 1979 hearing on remand, the district court specifically found that this practice has not changed; few black longshoremen obtain employment through either white Local 307 or [petitioner] Mexican-American Local 1576, and few white or Mexican-American longshoremen obtain employment through the black locals (329 and 851).

Accordingly, the court of appeals concluded that "[a]lthough the trial court may have been correct in stating that [petitioner] Local 1576 never *actively* discriminated against members of any racial group, the fact remains that as one of four segregated Galveston longshoremen's locals, [petitioner] Local 1576 has been part of a system which operates to discriminate against people because of race and national origin" (Pet. App. 10a; emphasis added).

Nor, in the court of appeals' view (Pet. App. 10a-12a), did the possible complexities of meshing petitioner's seniority list with those of the other Galveston locals excuse the inclusion of petitioner in the merger. The court reasoned that, as a factual matter, petitioner's members may not be disadvantaged by the merger, even if the merger were to take place under the seniority standards utilized by the other locals. But, in any event, the court concluded that the possibility that some blacks and whites might benefit at the expense of some Mexican-Americans did not justify permitting the discrimination resulting from segre-

gated locals to continue. The case was remanded to the district court for implementation of the requirement that petitioner be included in the merger (Pet. App. 50a-51a).

ARGUMENT

The court of appeals properly rejected petitioner's argument that it, alone among all of the Texas Gulf Coast locals that were concededly chartered and maintained on a segregated basis by the ILA, should be excused from the port-by-port merger of the locals ordered by the court of appeals to eliminate the discriminatory effects that segregation had on employment opportunities in Galveston and elsewhere. The decision below, which seeks to bring this 12-year-old litigation to a close, does not conflict with any decision of this Court or any other court of appeals. Further review by this Court therefore is not warranted.

1. Section 703(c)(2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(c)(2), provides that it shall be an unlawful employment practice for a labor organization to "limit, segregate, or classify its membership * * * or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee * * * because of such individual's race, color * * * or national origin." The district court, in its initial opinion, rejected the argument that the ILA's segregated locals constituted a per se violation of this section, but it concluded that the government had carried the burden of showing, in the circumstances of this case, "that the maintenance of segregated locals constitutes a pattern or practice depriving individuals of working oppor-

tunities, because of their race or national origin" (Pet. App. 45a). The court also found that "this will be a continuing violation in the future" (*id.* at 48a).

In view of these findings, the court of appeals properly ordered the merger of the segregated locals in each port to eliminate the discriminatory effects of the segregated locals. This conclusion is consistent with the decision of every other federal court that has considered the status of racially segregated local unions. See *Bailey* v. *Ryan Stevedoring Co.*, 528 F.2d 551, 556-557 (5th Cir. 1976), cert. denied, 429 U.S. 1052 (1977), on motions for relief from judgment, 613 F.2d 588 (5th Cir. 1980), cert. denied, No. 80-569 (Mar. 2, 1981); *United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418, 457-458 (5th Cir. 1971), cert. denied, 406 U.S. 906 (1972); *Long* v. *Georgia Kraft Co.*, 455 F.2d 331 (5th Cir. 1972); *Rock* v. *Norfolk & Western Ry.*, 473 F.2d 1344, 1348-1350 (4th Cir.), cert. denied, 412 U.S. 933 (1973); *United States* v. *International Longshoremen's Association*, 460 F.2d 497 (4th Cir.), cert. denied, 409 U.S. 1007 (1972); *Williams* v. *New Orleans Steamship Association*, 466 F. Supp. 662, 678-680 (E.D. La. 1979); *English* v. *Seaboard Coast Line R.R.*, 4 Empl. Prac. Dec. ¶ 7645 (S.D. Ga. 1972); *United States* v. *Chesapeake & Ohio Ry.*, 3 Empl. Prac. Dec. ¶ 8331 (E.D. Va. 1971); *Hicks* v. *Crown Zellerbach Corp.*, 310 F. Supp. 536 (E.D. La. 1970); *United States* v. *Local 189, United Papermakers & Paperworkers*, 301 F. Supp. 906, 919 (E.D. La.), aff'd, 416 F.2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970); see also *Evans* v. *Sheraton Park Hotel*, 503 F.2d 177 (D.C. Cir. 1974) (locals segregated by sex).[5]

---

[5] Petitioner contends (Pet. 21-22) that the decision below conflicts with *EEOC* v. *Local 14, International Union of Operating Engineers*, 553 F.2d 251 (2d Cir. 1977), in which,

2. Petitioner seeks to avoid the uniform precedent supporting merger of segregated locals by arguing (Pet. 4, 8, 10, 12, 14, 19, 20, 24) that it was not involved in a violation of Title VII and therefore should be excused from merging with the other Galveston locals. This assertion is flatly inconsistent with the record and the opinions of the court below and departs from petitioner's own past position in this case.

The district court found in its initial decision (Pet. App. 41a), and petitioner does not dispute, that the ILA chartered and maintained all of its Texas Gulf Coast locals on the basis of race. Petitioner, in par-

---

petitioner asserts, the Second Circuit reversed a remedial order requiring that two separate locals merge their hiring halls and adopted a rule requiring that Title VII relief not interfere with a defendant's business operations any more than necessary. However, *Local 14* involved two predominantly white locals, each of which was alleged to have excluded minorities, not, as here, local unions that were concededly segregated according to race and national origin. Moreover, the court of appeals reversed not, as petitioner intimates (Pet. 21), because of particular dissatisfaction with the order requiring merger of the hiring halls—indeed that was but one of 14 elements of the relief cited by the court of appeals (553 F.2d at 257). Rather, the court of appeals reversed because the district court had not held an evidentiary hearing on the question of relief, as was contemplated by the pretrial order, in order to consider what impact the order might have on the industry and the unions (*ibid.*). The court of appeals did not hold that merger of the hiring halls would be improper if that were ordered following the evidentiary hearing. In the present case, the district court held three evidentiary hearings on the motion to exclude petitioner from the merger order, and it considered at those hearings the reasons advanced by petitioner for different treatment of the banana and green fruit work. See Brief of Amicus Local 851, ILA at 7-8. This case therefore presents no conflict with *Local 14*.

ticular, had no black members and only 20 white members among its membership of 140 in 1971, and only 3 black and 30 white members among its greatly expanded membership of 250 in 1977 (Sept. 1979 Tr. 22-24, 73, 150; Government's Summaries of Depositions filed July 9, 1970, at 51-52). Moreover, as the court of appeals observed, the practice of referring employees out of hiring halls maintained by the segregated locals had not changed by 1979, and "few black longshoremen obtain employment through either white Local 307 or [petitioner] Mexican-American Local 1576, and few white or Mexican-American longshoremen obtain employment through the black locals (329 and 851)" (Pet. App. 9a-10a).[6] Based on this evidence, the court of appeals correctly observed that "Local 1576, still chartered as a union for Mexican-Americans, remains functionally segregated" (Pet. App. 9a).

Moreover, when the district court rendered its initial decision, there was relatively less demand for the banana and green fruit work to which petitioner's jurisdiction was limited by the ILA, and the court accordingly found (Pet. App. 47a) "no question that individuals belonging to [petitioner] Local 1576 have been denied an opportunity to work as longshoremen, because of the restrictions on their charter" (*ibid.*). The district court found a parallel situation with respect to the predominantly black Local 329, whose members' opportunities were restricted because of a charter provision limiting its jurisdiction to four stevedoring companies that had declining business.

---

[6] The court of appeals noted in this regard the following observation by the district court (Pet. App. 10a): "I don't doubt * * * at all that when there are some Blacks there in 1576 * * * the Mexican-Americans have the first crack at it. If I made any other findings, I would be a liar."

The court specifically concluded that "[t]he problems caused by this situation would not exist if all longshoremen at the port of Galveston belonged to one local" (Pet. App. 48a).

It was to eliminate these very effects of the seggregated locals in Galveston that the district court ordered the lifting of all jurisdictional restrictions in the charters of the Galveston locals and the merging of the hiring halls maintained by all four locals there, including petitioner, with a concomitant creation of a common seniority list. In their petition for a writ of certiorari filed in 1975, petitioner, the ILA, and other locals did not challenge—indeed they acknowledged (No. 75-356, at 12)—these findings of discrimination in Galveston; instead they argued that these effects would be adequately remedied by the district court's order that hiring halls and seniority lists be merged there.

Despite the abundant evidence and past findings of discrimination resulting from segregated locals in Galveston, and petitioner's own past acknowledgement of specific discriminatory effects of that segregation, petitioner now argues that it was not involved in a violation of Title VII and should not be included in the merger. Petitioner apparently relies on observations in the district court's opinion, after remand, that petitioner had not discriminated against members of any racial group. See Pet. App. 16a, 20a. But, in context, the court of appeals properly read these statements to constitute merely a conclusion that petitioner had "never *actively* discriminated against members of any racial group" (Pet. App. 10a; emphasis added). The district court, in making the observations relied upon by petitioner, did not disavow any of its earlier findings regarding the

effects of segregated locals in Galveston, particularly as they related to petitioner and Local 329 (Pet. App. 16a). To the contrary, in the same opinion, the district court reiterated its finding that there has been a "tradition among the Galveston locals that members of each race are expected to seek work only with the local whose membership is composed of that race." This tradition would, at the very least, "*tend* to deprive * * * individual[s] of employment opportunities" (42 U.S.C. 2000e-2(c)(2); emphasis added), even if petitioner did not discriminate against those individuals who actually sought membership in or referrals through petitioner, because the traditional practice would have the effect of steering individuals to locals comprised of members of their own race and, as a result, reducing the flow of black and white applicants to petitioner. Cf. *Teamsters* v. *United States*, 431 U.S. 324, 362-371 (1977). Thus, as the court of appeals concluded, "the fact remains that as one of four segregated Galveston longshoremen's locals, [petitioner] has been part of a system which operates to discriminate against people because of race and national origin" (Pet. App. 10a).

Petitioner cannot be heard to deny all complicity in this pattern or practice of discrimination which the district court expressly found in 1971 would continue in the future unless corrected. Petitioner was concededly chartered and maintained by its international union, the ILA, on a segregated basis.[7] Moreover, 1977 statistics showed that only three of its 240 members were black and that the percentage of white workers in its ranks had actually declined since 1971.

---

[7] This alone distinguishes *Milliken* v. *Bradley*, 418 U.S. 717 (1974), upon which petitioner relies (Pet. 19-20). See 418 U.S. at 745.

The traditional practice in Galveston was to reserve banana and green fruit work for petitioner, which is comprised predominantly of Mexican-Americans. The inevitable correlative effect of the traditional practice is the exclusion of blacks (and, to a lesser extent, whites) from banana and green fruit work, particularly in these times of relative plenty of such work. In these circumstances, the court of appeals plainly did not err in ordering that petitioner be included in the Galveston merger.[8]

3. Petitioner contends (Pet. 14-15) that the court of appeals' decision requiring that petitioner be merged with the other Galveston locals and, as a consequence, requiring the merger of the locals' seniority systems, is inconsistent with this Court's decision in *Teamsters* v. *United States*, 431 U.S. 324 (1977). Petitioner argues that, under *Teamsters*, a seniority system cannot be found unlawful unless it was established or maintained with the intent to discriminate. Because, it is contended, petitioner did not violate Title VII and there is no evidence or finding that its separate seniority system based on seniority in banana handling was established or maintained with an intent to discriminate, the violation of Title VII by other parties should have been remedied by means

---

[8] Petitioner contends (Pet. 7, 9, 12-13, 18) that the basis of the district court's finding of discrimination in Galveston was solely the division of the general longshore work on a 50-50 basis between black Local 851 and white Local 307. This contention is in error. The district court specifically found violations as well in the jurisdictional limitations applicable to petitioner and black Local 329, which barred them from sharing in the 50-50 division of general longshore work. Moreover, we fail to understand how, if a 50-50 division of work violates Title VII, the allocation of 100% of the banana and green fruit work to petitioner, which was also segregated, would not similarly violate Title VII.

other than merging petitioner's seniority system with those of the other locals. That remedial order, petitioner maintains, would work to the disadvantage of its members. This argument fails for a number of reasons.

a. The court of appeals did not, contrary to petitioner's apparent suggestion, order that the seniority of petitioner's members in the merged local be determined by application of the seniority standards utilized by the other three locals, rather than the relatively more liberal standards utilized by petitioner (Pet. App. 10a-12a, 50a-51a). Accordingly, the manner in which the seniority lists will be meshed remains open for consideration on remand. There is no reason to believe that the district court's options must be limited to those which may disproportionately favor or disfavor petitioner's members.[9] The court, in the

[9] The district court, on remand from the first court of appeals decision, perceived two different ways in which the locals could be merged under a uniform seniority system. The merged local could apply the standards utilized by the other three locals, which contained five-year steps and required that members work 700 hours in a year to earn seniority for that year. Alternatively, the merged local could grant a year's seniority to any member who had qualified in that year under the seniority plan in his own local. Under the latter approach, applying petitioner's seniority plan, petitioner's members would be credited with seniority in one-year, not five-year intervals, and would be credited with seniority in any year in which they worked 300 hours. The district court found that a uniform seniority system utilizing the latter approach would be acceptable, but rejected it solely because of objections of the other locals. Pet. App. 18a-19a. Objections of the other three segregated locals to a merger plan on the ground that their members might be disadvantaged in some fashion is, in itself, hardly a reason for rejecting this alternative. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 774-779

exercise of its equitable discretion, may be able to choose a sound middle course. Moreover, even if the district court were to apply the seniority standards of the other three locals, rather than those of petitioner, the court of appeals concluded (Pet. App. 11a) after reviewing the evidence that the district court's fear that such a merger would disadvantage petitioner's members may well have been unwarranted.[10] Accordingly, petitioner's objections to the merger order based on an asserted disadvantage to its members are both speculative and premature. There will be time enough to consider this claim if the district court enters a final merger order that unfairly disadvantages petitioner's members.

b. In any event, petitioner's argument that the decision below is inconsistent with *Teamsters* is expressly made dependent on its assertion that it was not involved in a violation of Title VII, because it argues that an alteration of its seniority system is not necessary to put victims of discrimination in their rightful place. See Pet. 14-15. As we have shown above, however (see pages 11-15, *supra*), the record and decisions below make clear that petitioner has been part of a system of segregated locals that has

---

(1976). Nor, for the same reason, is the fact that some of petitioner's members may be disadvantaged in terms of seniority as a result of merging the seniority lists sufficient reason to deny that relief.

[10] The court read the record (Pet. App. 11a) to suggest that many of petitioner's members may be able to satisfy the higher standards utilized by the other locals (see note 9, *supra*) and that many black longshoremen would have less seniority than petitioner's members regardless of the standards utilized.

operated to discriminate against individuals because of race or national origin, in violation of Title VII.[11]

Moreover, the merger of seniority lists is necessary to grant the longshoremen in the four locals the seniority they would have attained if there had been a single local in the port of Galveston with employment opportunities equally available to all—to put the members of the separate Galveston locals in their "rightful place." [12] Petitioner and its members could

---

[11] Put another way, although petitioner's seniority plan is not unlawful when considered in isolation, the fact that it is *maintained* separately from the seniority plans of the other locals (and therefore on a segregated basis) is unlawful for the same reasons that segregation of the locals themselves is unlawful under 42 U.S.C. 2000e-2(c)(2). Merger of the seniority lists therefore remedies the vice of segregation.

[12] Petitioner's assertion (Pet. 14-15) of a conflict with *Sledge* v. *J. P. Stevens & Co.*, 585 F.2d 625 (4th Cir. 1978), cert. denied, 440 U.S. 981 (1979), therefore is without merit. In *Sledge*, the court of appeals expressly approved the award of seniority relief to individual black employees who were the victims of discrimination, in accordance with the holding in *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976). See 588 F.2d at 643-644. In the portion of the *Sledge* opinion relied upon by petitioner, the court simply disapproved a provision permitting any present black employee who was to be laid off to "bump" a white employee from a job he already held if the black employee had greater plant seniority, even though the existing and lawful seniority plan provided for layoffs according to departmental seniority. The merger of the locals ordered by the court of appeals in the present case will not result in the "bumping" of employees from existing positions. Rather, it will create an integrated, "rightful place" seniority list to be used in future hiring and referrals from a common hiring hall. Moreover, here, unlike in *Sledge*, the separate nature of petitioner's seniority list was unlawful because segregation of the local was itself unlawful. See note 11, *supra*.

have no valid objection to the alteration of their expectations regarding seniority that might result from such "rightful place" relief even if, contrary to the evidence and findings in this case, petitioner had not been involved in a violation of Title VII. *Teamsters* v. *United States*, *supra*, 431 U.S. at 345-348; *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976).

c. Finally, we note that creation of a common seniority list and hiring hall for the four Galveston locals, including petitioner, was an integral part of the relief ordered by the district court in its initial decree to remedy the violations of Title VII it found in Galveston. Pet. App. 27a; Appendix to the Petition for a Writ of Certiorari (No. 75-356, 1975 Term) at 15a-18a. The district court later retreated from ordering that relief only because the other three locals objected to one manner of creating a unified seniority list and because the court concluded that petitioner had not discriminated in its membership and referral policies, when considered in isolation. As we have explained (see pages 11-15, 16 note 9, *supra*), neither of these grounds was a valid basis for excusing petitioner from the merger, much less dismissing it as a party defendant. Accordingly, the merger of seniority lists that will result from the merger of locals ordered by the court of appeals is fully consistent with the relief ordered by the district court at the time it concluded, correctly, that Title VII had been violated by maintenance of segregated locals. [18]

---

[18] For this reason, petitioner errs in arguing (Pet. 23-26) that the court of appeals merely "substitute[d] its judgment" for that of the district court about the appropriate relief and thereby violated principles governing the allocation of

4. Petitioner also errs in arguing (Pet. 21-22) that the court of appeals' order requiring merger of the locals was improper because it would alter the established business practice of having a separate local for banana handlers. In the first place, this argument depends, as does petitioner's seniority argument, *supra*, on the underlying assertion that the only Title VII violation in Galveston concerned the division of work among the other three locals and did not involve petitioner. See Pet 22. As we have explained, this assertion is incorrect.

Moreover, at an earlier stage in this litigation, petitioner itself sought to have the jurisdictional limitations in its charter lifted so that it could compete for other longshore work (Pet. App. 47a). This substantially undercuts its current argument (Pet. 22), now that banana work has increased (Pet. 8), that a specialized local handling only banana work is essential. The district court's initial decree ordering the creation of a common hiring hall and seniority list

---

authority between the two courts. Contrary to petitioner's contention, the court of appeals found that the district court had committed errors of law, not fact, in finding that petitioner was not a party to a violation of Title VII and in excluding petitioner from a merger of seniority lists. Once these errors of law were corrected, the relief ordered by the court of appeals—merger of the segregated locals and, as an incident thereto, merger of seniority lists—followed from the court of appeals' own review of the record and the district court's prior findings and from the application of settled legal principles. In any event, petitioner's fact-bound argument that the district court's findings of fact (assuming the district court's conclusions could be so characterized) were not clearly erroneous and should not have been disturbed by the court of appeals does not warrant review by this Court.

would have eliminated the specialized unit of banana handlers petitioner now seeks, and yet petitioner did not raise this argument against the court of appeals' merger order in its petition for certiorari seeking review of that order. And, finally, the supposedly specialized nature of the banana work was not the principal basis on which the district court, on remand, excluded petitioner from the merger; exclusion was ordered because of difficulties in merging seniority lists and because of the district court's mistaken belief that petitioner did not participate in a violation of Title VII. The district court did note (Pet. App. 19a) the "possibility" that the banana industry might take its business to another port if petitioner's members disappear from the banana trade. But, under the integrated seniority and hiring hall to be maintained by the merged local, many of petitioner's members would continue to be assigned to work for the stevedoring company handling bananas, and therefore would not disappear from the trade. To the extent special measures are needed to protect the banana trade and keep it in Galveston, the merged local would have every incentive to accommodate these needs on behalf of its membership at large. Speculation about the impact on the banana trade therefore does not warrant the exclusion of petitioner from the merger order.[14]

5. Petitioner's argument (Pet. 16-19) that the merger order conflicts with federal labor policy is frivolous. "Plainly, national labor policy embodies the principles of nondiscrimination as a matter of highest priority," *Emporium Capwell Co.* v. *Western Addition Community Organization*, 420 U.S. 50, 66

---

[14] In any event, as amicus Local 851 points out (Br. 7-8), the record establishes that banana work is not particularly skilled or specialized.

(1975); see also *Steele* v. *Louisville & Nashville R.R.*, 323 U.S. 192, 202-204 (1944), and merger of segregated local unions is fully consistent with the National Labor Relations Act. *NLRB* v. *Local No. 106, Glass Bottle Blowers Association*, 520 F.2d 693 (6th Cir. 1975);[15] *Chicago Federation of Musicians, Local No. 10* v. *American Federation of Musicians*, 57 L.R.R.M. 2227 (N.D. Ill. 1964); *Musicians' Protective Union Local 274* v. *American Federation of Musicians*, 329 F. Supp. 1226 (E.D. Pa. 1971).[16]

---

[15] The Sixth Circuit stated in *Glass Bottle Blowers* (520 F.2d at 697):

> The rights of minorities are not forfeited by the merger of the Local Unions. These rights are protected by the duty imposed on the bargaining agent to represent fairly all employees in the unit.

[16] This argument, like petitioner's other contentions, is premised on its mistaken assertion that it was not a party to a violation of Title VII (see Pet. 17-18), and must therefore be rejected for this reason as well.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

LEROY D. CLARK
General Counsel

PHILIP B. SKLOVER
Acting Associate General Counsel

VINCENT BLACKWOOD
Assistant General Counsel

JOEL M. COHN
Attorney
Equal Employment Opportunity Commission

MARCH 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 339858 290